

1 H. CHRISTIAN L'ORANGE (State Bar No. 71730)  
S. FEY EPLING (State Bar No. 190025)  
2 DRINKER BIDDLE & REATH LLP  
50 Fremont Street, 20th Floor  
3 San Francisco, California 94105-2235  
Telephone: (415) 591-7500  
4 Facsimile: (415) 591-7510  
E-mail: [christian.lorange@dbr.com](mailto:christian.lorange@dbr.com)  
5 E-mail: [fey.epling@dbr.com](mailto:fey.epling@dbr.com)

6 Attorneys for Plaintiff  
AXA EQUITABLE LIFE INSURANCE COMPANY  
7

8 UNITED STATES DISTRICT COURT OF CALIFORNIA  
9 SOUTHERN DIVISION  
10

11 AXA EQUITABLE LIFE INSURANCE  
COMPANY,

Case No. 08-CV-0569

12 Plaintiff,

**JOINT MOTION FOR  
PROTECTIVE ORDER**

13  
14 v.

15 H. THOMAS MORAN, II, Court-  
Appointed Receiver of LYDIA  
CAPITAL, LLC and DAWSON AND  
16 OZANNE, as Trustee of the Alvin  
Fischbach Irrevocable Trust,

17 Defendants.  
18

19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 Plaintiff AXA Equitable Life Insurance Company (“AXA Equitable”) and  
21 Defendant H. Thomas Moran, II, Court-Appointed Receiver of Lydia Capital, LLC  
22 (the “Receiver”) (AXA Equitable and the Receiver are collectively referred to as  
23 the “Parties” and individually referred to as “Party”) each have requested that the  
24 other produce information and disclose documents pertaining to its business and  
25 the businesses of third parties; and

26 WHEREAS, the Parties may deem certain of this information and these  
27 documents confidential; and

28 WHEREAS, the Parties may object to the disclosure of such information,

1 production of these documents and offering these documents, as evidence, into the  
2 open record of the Court, unless appropriate protection for their confidentiality is  
3 assured;

4 NOW, THEREFORE, subject to the approval of the Court, the executing  
5 Parties hereby stipulate and agree to the following Stipulated Protective Order (the  
6 “Stipulation”):

7 1. As used herein, the term “Confidential Material” shall mean  
8 documents that a Party (the "Producing Party") in good faith deems to be  
9 confidential pursuant to the terms of this Stipulation, except that such documents  
10 and information that are publicly available shall not be deemed Confidential  
11 Material.

12 2. The Producing Party shall designate in good faith particular  
13 documents Confidential Material by labeling such documents “Confidential  
14 Material.” If the non-producing Party (the "Receiving Party") objects to the  
15 designation of particular documents as Confidential Material, the Receiving Party  
16 shall state such objection in writing to the Producing Party, and the Parties shall  
17 endeavor in good faith to resolve such objection. If such objection cannot be  
18 resolved, then the Producing Party shall, within ten (10) days of receiving an  
19 objection, move the Court for an order approving such designation.

20 3. The recipient of documents designated as Confidential Material shall  
21 not use such documents for any purpose other than for the preparation or  
22 presentation of the Receiving Party's case in this action or other litigation between  
23 the Parties, except as set forth below.

24 4. Counsel for the Receiving Party shall not disclose any document  
25 marked Confidential Material, except to the following persons:

26 (a) To a Party, or an employee of a Party, or a deponent, to the  
27 extent necessary to the preparation or presentation of the Receiving Party's case in  
28 this action or other litigation between the Parties.

1 (b) To an expert or experts who has or have been retained or  
 2 specially employed by the attorneys in this action; or

3 (c) To the Court.

4 5. The Parties recognize that a Receiving Party is not prohibited from  
 5 using any document marked Confidential Material in the investigation of such  
 6 Party's case or defense, provided that, such Party does not show or quote a  
 7 document so designated to any person other than as described in paragraph 4,  
 8 subject to any exceptions set forth in paragraph 6 below. Deposition testimony  
 9 concerning any document designated Confidential Material, which testimony  
 10 reveals the contents of such materials shall be deemed confidential, and the  
 11 transcript of such testimony, together with any exhibits referred to therein, shall, at  
 12 the request of the Producing Party to the Court reporter, be separately bound with a  
 13 cover page prominently marked Confidential Material. Such portion of the  
 14 transcript shall be deemed to be Confidential Material within the meaning of this  
 15 Stipulation.

16 6. Before disclosing documents labeled Confidential Material, or the  
 17 contents thereof, to any person falling within the categories set forth in paragraphs  
 18 4(a), 4(b), and 4(c) above who are not employed by or affiliated with the  
 19 Producing Party, counsel shall explain to each such person that the documents are  
 20 confidential and are subject to a this Stipulation. Before disclosing any  
 21 Confidential Material, or the contents thereof, to any such person, counsel for the  
 22 Party indenting to make such disclosure shall advise the intended recipient of the  
 23 provisions of this Stipulation and provide the intended recipient with a copy of this  
 24 Stipulation. In addition, the intended recipient shall sign a written certification in  
 25 the following form:

26 I hereby acknowledge that I, [name], [position of  
 27 employment], am about to receive confidential  
 28 information supplied in connection with the litigation  
 entitled AXA Equitable Life Insurance Company v. H.  
 Thomas Moran, II, Court-Appointed Receiver of Lydia

Capital, et al., Case No. 08-CV-0569. I understand that such information is to be provided pursuant to the terms and restrictions of the Protective Order attached hereto (as the "Stipulation"). I have been given a copy of the Stipulation and I have read the Stipulation. I understand that Confidential Material as defined in the Stipulation, or any notes or other records that may be disclosed to me or made by me regarding any such materials, must not be disclosed to any persons except as permitted by the Stipulation. I agree to be bound by the terms of the Stipulation.

7. No copies of any documents labeled as Confidential Material, shall be made except to the extent necessary for the preparation of the Receiving Party's case in this action or other litigation between the Parties, including, but not limited to, preparation for trial and for any and all appeals involving this action or other litigation between the Parties, and, if the duplicating process by which copies of documents labeled as Confidential Material are made does not reproduce the Confidential Material stamp appearing on the original, all copies shall be stamped with a Confidential Material designation.

8. This Stipulation shall not be deemed a waiver of:

- (a) Any Party's right to object to any discovery request for any reason;
- (b) Any Party's right to seek an order compelling discovery with respect to any discovery request; and
- (c) Any Party's right at any hearing to object to the admission of any evidence for any reason.

9. The provisions of this Stipulation shall continue in effect with respect to any Confidential Material unless expressly released by the Producing Party, and such effectiveness shall survive the use of any such Confidential Material in any court proceeding and the entry of any final judgment, dismissal or settlement herein. The Court shall retain jurisdiction to enforce or modify this Stipulation.

10. Counsel shall attempt to agree upon procedures to protect the confidentiality of information designated as Confidential Material at any hearing or

1 trial. Prior to such hearing or trial, counsel shall submit proposed procedures,  
2 including any disputes relating thereto, to the Court for its approval or  
3 modification.

4 11. This Stipulation is agreed upon without prejudice to the right of any  
5 Party to waive the applicability of this Stipulation to any Confidential Material  
6 produced by that Party.

7 12. The failure to designate a document as Confidential Material does not  
8 constitute a waiver of such claim, and the Producing Party may so designate a  
9 document after such document has been produced, with the effect that such  
10 document is subject to the protections of this Stipulation only on and after the date  
11 of the Receiving Party learning of such designation.

12 13. If information subject to a claim of attorney-client privilege, attorney  
13 work product, or any other ground on which production of such information should  
14 not be made to any Party is nevertheless inadvertently produced to such Party(ies),  
15 such production shall in no way prejudice or otherwise constitute a waiver of, or  
16 estoppel as to, any claim of privilege, work product, or other ground for  
17 withholding production to which the Producing Party would otherwise be entitled  
18 (collectively, a "privilege"). If a claim of inadvertent production is made pursuant  
19 to this paragraph with respect to information then in the custody of the Receiving  
20 Party, the Receiving Party shall promptly return to the Producing Party that  
21 material (or the portion thereof) as to which the claim of inadvertent production  
22 has been made, including any copies that are not destroyed, and the Receiving  
23 Party shall not use such information for any purpose until the Court issues an order  
24 concerning the Producing Party's claim that the documents were inadvertently  
25 produced. The Party returning such material may subsequently move the Court for  
26 an order compelling production of the material, but any such motion shall not  
27 assert as a ground for entering such an order the fact or circumstances of the  
28 inadvertent production, unless the moving Party asserts that there was no valid

1 basis for withholding production of the documents.

2 14. In the event that any person or Party bound by this Stipulation is  
3 served with a subpoena or is otherwise ordered by any other court and/or  
4 administrative agency to produce Confidential Material obtained under the terms  
5 of this Stipulation, such persons or Parties shall promptly notify counsel for the  
6 Producing Party by electronic mail and facsimile of the pendency of such subpoena  
7 or other order to produce on or no later than ten (10) days before the return date of  
8 the subpoena or other order to produce.

9 15. Any Party may apply at any time to the Court to enforce this  
10 Stipulation; for relief from, modification of or exception to this Stipulation; or for  
11 such other relief as may be appropriate with respect to this Stipulation.

12 16. This Stipulation has no effect upon, and shall not apply to, a Party's  
13 use or disclosure of its own Confidential Material for any purpose.

14  
15  
16 /s/ S. Fey Epling  
17 H. Christian L'Orange (SBN 71730)  
S. Fey Epling (SBN 190025)  
18 DRINKER BIDDLE & REATH LLP  
19 50 Fremont Street, 20th Floor  
San Francisco, California 94105-2235  
20 Telephone: (415) 591-7500  
Facsimile: (415) 591-7510  
21 E-mail: christian.lorange@dbr.com  
E-mail: fey.epling@dbr.com

22 Attorneys for Plaintiff  
23 AXA EQUITABLE LIFE  
INSURANCE COMPANY

16 /s/ Shannon K. Emmons  
Melvin R. McVay, Jr.  
Shannon K. Emmons  
Douglas M. Todd  
18 PHILLIPS MCFALL MCCAFFREY MCVAY  
& MURRAH, P.C.  
19 Corporate Tower / Thirteenth Floor  
101 North Robinson  
20 Oklahoma City, Oklahoma 73102  
Telephone: (405) 235-4100  
Facsimile: (405) 235-4133  
21 E-mail: mrmvay@phillipsmcfall.com  
skemmons@phillipsmcfall.com  
[dmtodd@phillipsmcfall.com](mailto:dmtodd@phillipsmcfall.com)

22 Attorneys for H. Thomas Moran, II,  
23 Court-Appointed Receiver of Lydia  
24 Capital, LLC